

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON

MOUNTAIN VALLEY PIPELINE, L.L.C.:
Plaintiff, : CIVIL ACTION NO.
: 2:17-cv-04214
-vs- :
AN EASEMENT TO CONSTRUCT, :
OPERATE AND MAINTAIN A 42-INCH :
GAS TRANSMISSION LINE ACROSS :
PROPERTIES IN THE COUNTIES OF :
NICHOLAS, GREENBRIER, MONROE, :
SUMMERS, BRAXTON, HARRISON, :
LEWIS, WEBSTER, AND WETZEL, :
WEST VIRGINIA, et. al., :
Defendants. :
:

TRANSCRIPT OF PRELIMINARY INJUNCTION HEARING
BEFORE THE HONORABLE JOHN T. COPENHAVER, JR.
UNITED STATES DISTRICT JUDGE
FEBRUARY 7, 2018

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Proceedings recorded by mechanical stenography,
transcript produced by computer.

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1 (Excerpt of proceedings. Proceedings preceded and
2 followed the excerpt but were not transcribed.)

5 MS. BAGNELL: Yes, Your Honor.

6 Your Honor, we would like to call Todd Goldman.

7 TODD GOLDMAN, PLAINTIFF'S WITNESS, SWORN

DIRECT EXAMINATION

9 | BY MS. BAGNELL:

10 Q. Good afternoon, Mr. Goldman. Could you please state
11 your full name for the record.

12 A. My name is Todd Goldman.

13 Q. And what is your occupation?

14 **A.** I'm in the real estate business. So I do real estate
15 appraisals, brokerage work, and I also handle investment
16 property and management.

17 Q. How long have you been an appraiser?

18 **A.** 24 years.

19 Q. And where do you work?

20 **A.** Goldman Associates.

21 Q. Could you briefly summarize your educational background
22 and tell us about any licenses or professional
23 certifications you have?

24 **A.** Yes, ma'am. My college education is a bachelor's of
25 science in finance from Virginia Tech. I have an MBA from

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1 Marshall University. As soon as I graduated from college, I
2 started with my real estate licensing, which included sales
3 license in Virginia, and West Virginia. I immediately
4 started my appraisal apprentice courses, which takes about
5 two years of supervised work. And then I obtained the
6 Certified General Appraiser License in West Virginia. I
7 currently hold an Appraisal License in Virginia, as well.

8 And as part of the real estate brokerage business, I
9 obtained a CCIM, and that's a designation which is an
10 experienced-based designation in brokerage work.

11 As far as the appraisal work, I'm an MAI, which is a
12 part of the appraisal institute. And it's a higher level of
13 education, peer review, that is voluntary, but shows the
14 credentials associated with years of experience in
15 peer-reviewed work.

16 **Q.** Have you ever prepared appraisals for condemnations
17 before?

18 **A.** Yes, ma'am.

19 **Q.** Have you appraised properties with pipelines before?

20 **A.** Yes, ma'am.

21 **Q.** And do you typically work for landowners or condemnors?

22 **A.** I've worked for both. And in the process as I sit here
23 today, working for both.

24 **Q.** Have you ever testified in a condemnation case before?

25 **A.** Yes, ma'am.

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1 **Q.** Who hired you to complete work on this project?

2 **A.** Your firm, Reed Smith.

3 **Q.** What was the purpose of your work?

4 **A.** The purpose was to provide preliminary value estimates
5 of the properties that were un-acquired tracts so that the
6 client could use that work to submit to the Court in the
7 event that it got to a condemnation hearing so that there
8 was a baseline for what the value of the properties or the
9 value of the property that was going to be used for the
10 project is.

11 **Q.** And in what counties were the properties that you were
12 asked to appraise?

13 **A.** Nicholas, Greenbrier, Summers, and Monroe.

14 **Q.** Can you briefly or generally describe the properties
15 you reviewed; for example, were they rural or urban?

16 **A.** Sure. The properties are spread over a pretty lengthy
17 geographic area, Lindside is kind of southern boundary;
18 Craigsville is the northern boundary. So the southern part
19 of that area is generally farmland. It's all fairly rural.
20 And when I say rural, I'm referring to things like
21 population density, access to utilities, access to roads,
22 density of development.

23 As you proceed north, particularly once you get into
24 Summers County, and then in Greenbrier and also Nicholas, it
25 becomes more mountainous terrain, steeper release, and more

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1 woodland.

2 **Q.** Does the appraisal profession have a set of standards
3 they comply with?

4 **A.** Yes, ma'am.

5 **Q.** Can you tell us about those.

6 **A.** Well, it's the Uniform Standards of Professional
7 Appraisal Practice. And I may refer to it as USPAP. That's
8 a common acronym that people will use. And those are the
9 standards that must be applied -- or I must adhere to,
10 regardless of the appraisal assignment. Any time that I as
11 an appraiser assign a value to a parcel of property, that's
12 the standard that we go by.

13 **Q.** And did you comply with USPAP here?

14 **A.** Yes, ma'am.

15 **Q.** Are there other standards that you're familiar with for
16 performing appraisals?

17 **A.** There is a wide range, depending on specific projects.
18 If you give me an example, I could --

19 **Q.** Sure. Are you familiar with the Uniform Standards for
20 Federal Land Acquisitions?

21 **A.** Yes, frequently called the Yellow Book.

22 **Q.** Can you tell us, what is the difference between USPAP
23 and the Yellow Book?

24 **A.** Well, USPAP is going to be something that all
25 appraisers must abide by. The Yellow Book standards,

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1 Uniform Appraisal Standards for Federal Land Acquisitions,
2 are just that, it is for federal land acquisitions. And
3 it's generally for when properties are going to be acquired
4 by a government agency, whether by private barter or by
5 condemnation. And it has a unique set of criteria that are
6 required that are over and above USPAP, to some extent, but
7 they will result in the same value.

8 **Q.** Is the Yellow Book required to be used here?

9 **A.** No.

10 **Q.** Why not?

11 **A.** This is not a federal entity acquiring private
12 property.

13 **Q.** Is that true even though it's federally regulated, the
14 entity that's acquiring the property?

15 **A.** That's true. And the best example that I can give is
16 for an interstate construction project. Those are funded by
17 federal funds, are overseen by the local Department of
18 Highways, and Yellow Book standards are not required in
19 those instances.

20 **Q.** Did you prepare a report for the work that you did?

21 **A.** Yes, I did.

22 MS. BAGNELL: If I may approach, Your Honor?

23 BY MS. BAGNELL:

24 **Q.** Mr. Goldman, I've marked the document as Exhibit 7.

25 Can you tell me what this document is.

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1 **A.** This is a report that I prepared titled "Mountain
2 Valley Pipeline Un-Acquired Tracts Property Valuations."

3 **Q.** And does this report summarize the work that you did in
4 coming to your opinion of value?

5 **A.** Yes, ma'am.

6 MS. BAGNELL: Your Honor, in the interest of time,
7 rather than going through each of the specifics of this 69
8 parcels, I would offer Exhibit 7 for admission and then will
9 ask Mr. Goldman to summarize the testimony.

10 MR. CLARKE: Your Honor, I do object to it. I
11 don't think the witness has been recognized as an expert at
12 this point, but I also object more generally because I don't
13 think the document that has been offered is appropriate
14 evidence for the proceeding that we're here today before the
15 Court.

16 I do think the Yellow Book does apply, Your Honor. I
17 have a number of questions that I'd like to ask him on
18 cross-examination.

19 THE COURT: Why would the Yellow Book apply?

20 MR. CLARKE: I think it's -- we're in federal
21 court. It's a condemnation under the Fifth Amendment, Your
22 Honor.

23 THE COURT: Well, it's not federal property
24 involved. And are you serious in thinking that the Yellow
25 Book applies to something other than a federal condemnation

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1 proceeding?

2 MR. CLARKE: Your Honor, from the Yellow Book
3 itself, it says, "These standards explain the valuation
4 requirements that apply to all federal acquisitions
5 involving, quote, 'the measure of compensation grounded upon
6 the Constitution of the United States.'"

7 THE COURT: That says "Federal acquisitions,"
8 doesn't it?

9 MR. CLARKE: It does, Your Honor. But --

10 THE COURT: Well, this is not a federal
11 acquisition.

12 MR. CLARKE: Well, Your Honor, I believe it is.

13 THE COURT: Well, it isn't, of course, but you can
14 make the objection.

15 MR. CLARKE: I will make the objection. We're
16 here in federal court under a federal statute. They've been
17 delegated the federal power of eminent domain under the
18 Fifth Amendment pursuant to the Natural Gas Act.

19 THE COURT: This doesn't work that way. But,
20 nevertheless, the point has been made. The initial
21 objection that you made, aside from the fact that it's not
22 Yellow Book, would you restate it?

23 MR. CLARKE: I don't think this gentleman has been
24 qualified as an expert at this point.

25 THE COURT: Do you wish to voir dire?

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1 MR. CLARKE: Well, I have extensive
2 cross-examination on that, Your Honor.

3 THE COURT: I'm not asking you to go into the
4 merits. I'm asking if you wish to voir dire the witness?

5 MR. CLARKE: Your Honor, I'd like to reserve it
6 for cross is what I'm saying.

7 THE COURT: You may proceed.

8 MS. BAGNELL: So, Your Honor, I move for the
9 admission of Exhibit 7.

10 THE COURT: And so, again, is there any objection
11 besides that posed by Mr. Clarke to this exhibit?

12 MR. LOLLAR: Your Honor, I would object to the
13 report as being based on hearsay, and I don't think the
14 report should be admitted.

15 THE COURT: The Court's going to provisionally
16 admit Plaintiff's 7 so that you may proceed with your
17 examination.

18 BY MS. BAGNELL:

19 **Q.** Mr. Goldman, because this is a condemnation, can you
20 generally explain what method you followed to formulate your
21 opinion of the value of the properties being taken?

22 **A.** Well, the methodology that was used in this case was a
23 federal process, which is to value the whole and value the
24 take -- or value the residue, and the difference is the
25 value that is taken, or the just compensation for the

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1 property owner.

2 **Q.** And can you generally talk about the methodology you
3 used. Are there different approaches to valuing property?

4 **A.** Yes, ma'am. There is three approaches that are -- and
5 variations of each, but the sales comparison, the cost, and
6 the income approaches are the three approaches that are the
7 fundamentals of appraising property. In this particular
8 case, the properties that I worked on did not have the
9 improvements that were impacted by the project, so there was
10 no improvements to deal with in regards to Cost Approach.
11 So the Cost Approach is not relevant.

12 The Income Approach is only relevant if the property
13 type that's being appraised is the type that would be sought
14 out by investors with the expectation of creating enough
15 revenue on an annual basis to repay them for their
16 investment. And that's not the case for the types of uses
17 that these properties -- the highest and best uses of these
18 particular properties.

19 So it leaves the Sales Comparison Approach is the only
20 methodology that is proper.

21 **Q.** And so did you look at comparable sales to reach your
22 opinion of value?

23 **A.** I did.

24 **Q.** And is it typical for appraisers to use comparable
25 sales to form an opinion of value?

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1 **A.** Yes, ma'am.

2 **Q.** Can you explain for us generally the comparable sales
3 you used and how you came about choosing those comparable
4 sales?

5 **A.** Yes. There is multiple sources that we have, and it's
6 all based on courthouse research and confirming sales that
7 are actual arm's length transactions between willing buyers
8 and sellers. So these particular areas, there is quite a
9 bit of information available through the Greenbrier Valley
10 Multiple Listing Service, the Beckley area Multiple Listing
11 Service, the Fayette-Nicholas Multiple Listing Services.
12 These are also areas I'm working in on a regular basis. So
13 we maintain a database of transactions that encompass these
14 areas anyway. So that is the primary sources that I used.

15 Again, it's all based on verification through brokers,
16 property owners, courthouse records. And those were the
17 sources of data.

18 As far as the types of comparable sales, it all depends
19 on the highest and best uses of the individual properties
20 that were appraised. In some cases, they might have been
21 along the river. There was some -- an attribute, like, a
22 river, or proximity to a road that needed to be taken into
23 consideration. In other cases, they were woodland. So, of
24 course, we sought out the woodland tracts for comparison.

25 **Q.** In your opinion, are the properties you used as

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1 comparable sales actually comparable to the properties at
2 issue in this litigation?

3 **A.** Yes, ma'am.

4 **Q.** How did you value the take?

5 **A.** The value of the take is a component of the -- what the
6 property rights were given up by the owner. And so in this
7 case, the take is the main line route, which is -- I use 125
8 feet of width, which is the permanent and the temporary
9 components. I treated it all as permanent. So that there
10 was maximum benefit for the property owners as far as the
11 property that was going to be impacted. And then a unit
12 value that was consistent with the fee-simple value of the
13 surface was applied to that component.

14 **Q.** And is this method generally accepted and used in the
15 appraisal community?

16 **A.** Yes, ma'am.

17 **Q.** Other than this comparable sales you've already
18 discussed, are there any other materials that you relied
19 upon in coming to your opinion of value?

20 **A.** Yes, ma'am. Well, one of the biggest things is the
21 fact that this is an area that I know well because I work in
22 it on a daily basis. Secondly, we look at economic data.
23 We subscribe to local newspapers to know the changes that
24 might be occurring, population, census information. All of
25 those are components that, while I may not have looked at a

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1 specific document when preparing this, as part of my regular
2 course of business, I'm doing that on a daily basis.

3 **Q.** Is it typical for appraisers in the industry to rely on
4 these type of records?

5 **A.** Yes, ma'am.

6 **Q.** Are there other materials or information that an
7 appraiser would typically rely on to complete an appraisal
8 that you considered here?

9 **A.** I'm not sure what you're referring to.

10 **Q.** Did you look at any maps or drawings or do any court
11 record, recorded document search?

12 **A.** Well, initially, once I know the property that's being
13 appraised, we develop a work file. And so that work file is
14 going to have a copy of the deed, it's going to have tax
15 information. And in this case, the client or the client
16 through one of their agents, or their clients provided the
17 alignment sheets, any maps that were available, title pins
18 that might have been available. Those are all components
19 that were gathered as part of the work file that I have put
20 together on each of these properties.

21 **Q.** Are there any other materials or information an
22 appraiser would typically rely on to complete an appraisal
23 that you did not consider?

24 **A.** Well, we did not have access to walk onto the
25 properties. So everything that I did from an inspection

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1 perspective was from a public road. And so we did not have
2 access onto the property. We did not walk any of the
3 right-of-ways, and I did not have access to speak with any
4 of the property owners.

5 **Q.** Are those steps required?

6 **A.** Not in USPAP, no, ma'am.

7 **Q.** Had you taken those steps, would your opinion of the
8 value of the property necessarily have changed?

9 **A.** I don't know.

10 **Q.** Are all the steps that you have described up until this
11 point typical for an appraiser to rely on under these
12 circumstances?

13 **A.** Yes.

14 **Q.** Based on your education and experience, are you able to
15 give an opinion as to the estimate of the change in value of
16 the property resulting from the rights condemned by MVP on
17 the properties?

18 **A.** Yes, ma'am.

19 **Q.** Based on what you described, is it common for an
20 appraiser to give this type of information?

21 **A.** Yes, ma'am.

22 **Q.** With respect to the easements on the property, did you
23 make any assumptions in coming to an opinion on the
24 diminution of value?

25 **A.** There were several assumptions, one of which I stated,

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1 and I think is important, is the 125 feet of width was
2 treated as a permanent right-of-way, even though part of it
3 is temporary. The other factor is that at the point in time
4 we did our work, the survey only showed the length of the
5 right-of-way, and in some cases meandering across property
6 lines. And the way that the information was provided to me,
7 was that the length of that right-of-way that meandered
8 across two different properties was valued to each party's
9 benefit at 100 percent. So if they shared a right-of-way
10 that was 125 feet in width, they each got the full benefit
11 of it, even though some may not have been on their property.

12 As far as the temporary roads were concerned -- or
13 the -- some of those overlaid existing roads, I disregarded
14 that. I assumed that they would all be newly developed in
15 terms of how they were valued.

16 **Q.** So in all of these instances, would it result in your
17 opinion of the value being overinclusive or underinclusive?

18 **A.** It would be overinclusive, based on the information
19 that I have today as in this report because the sizes were
20 overstated.

21 **Q.** In preparing your estimate of the diminution of value
22 of the properties, did you consider any hypothetical
23 concerns, such as potential damages?

24 **A.** Not hypotheticals.

25 **Q.** Why not?

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1 **A.** There is certain things that you couldn't speculate
2 about. And then there is other things that are going to be
3 part of the project that have to be returned to a level of
4 normalcy, and I have to use that assumption as part of the
5 work that I do.

6 **Q.** And is it typical for appraisers to use the assumptions
7 that you made?

8 **A.** Yes.

9 **Q.** Did you factor in trees in the comparable sales that
10 you looked at?

11 **A.** I did, to the extent that if a property was a wooded
12 tract of land, that the comparable sales were wooded tracts
13 of land.

14 **Q.** You mentioned a few times in your testimony the highest
15 and best use. Can you tell us what that means?

16 **A.** Sure. The highest and best use is really the hinging
17 point of an appraisal assignment. It has four components to
18 it. It has to be legally permissible, which usually relates
19 to land use regulations; it has to be physically possible,
20 and that relates to what utilities it has, what road service
21 it might have, the terrain, the activity around it; and then
22 it has to be financially feasible. It has to be something
23 that can create a return for the property owner. And then
24 it has to be maximally productive. And that is the ultimate
25 highest and best use. And so that is an important part of

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1 an appraisal assignment, because it dictates the type of
2 comparable sales that are appropriate for comparison.

3 **Q.** And did you consider the highest and best use?

4 **A.** Yes.

5 **Q.** So with respect to the permanent easements on the
6 properties, have you reached an opinion of the change in
7 fair market value for purposes of setting a bond?

8 **A.** Yes.

9 **Q.** And with respect to the temporary easements on the
10 properties, have you reached an opinion as to the same?

11 **A.** Yes.

12 **Q.** Is it your opinion that for purposes of setting a bond
13 in this case that would cover the value of the easements,
14 your analysis is sufficient and accurate for the properties
15 you've viewed?

16 **A.** Yes.

17 **Q.** I'd like to show you a document I'll mark as
18 Plaintiff's Exhibit 8.

19 MS. BAGNELL: Your Honor, before I ask Mr. Goldman
20 for his opinion as to the value, I'd like to move for him to
21 be qualified as an expert in this case.

22 THE COURT: Once again, I'd like counsel to take
23 the witness on voir dire, if you wish.

24 MR. CLARKE: I'm going to reserve for cross, Your
25 Honor.

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1 THE COURT: Now is the time.

2 MR. CLARKE: Well, if I understand the Court, am I
3 allowed to begin a line of questioning that would be part of
4 my cross-examination?

11 THE COURT: You may proceed with the witness.

12 BY MS. BAGNELL:

13 Q. Mr. Goldman, can you tell me what this document is?

14 **A.** This is a summary of, I believe, 69 parcels, identified
15 by parcel ID, tax assessor numbers, landowners, and the
16 appraised value that was reported in my report.

17 Q. And does it appear to be an accurate summary of the
18 conclusions you came to in doing your expert appraisal work?

19 **A.** Yes, it does.

20 MS. BAGNELL: Your Honor, I'd like to move for
21 admission of Exhibit 8.

22 THE COURT: Let me ask, Mr. Goldman, is this a
23 summary of what's in Plaintiff's 7?

24 THE WITNESS: It is.

25 THE COURT: This pulls out the 69?

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1 THE WITNESS: Yes, sir.

2 THE COURT: That are at issue?

3 THE WITNESS: Yes, sir.

4 THE COURT: Thank you. Any objection to
5 Plaintiff's 8?

6 MR. TEANEY: We have the same objection to it as
7 we had to the report itself, but nothing other than that.

8 THE COURT: Very good. You may proceed.

9 I must apologize. I'm going to have to be excused for
10 a few moments. Thank you.

11 MS. BAGNELL: Yes, Your Honor.

12 THE CLERK: All rise.

13 (A recess was taken at 3:51 p.m. until 4:04 p.m.)

14 THE CLERK: All rise.

15 THE COURT: Please be seated. Again, my
16 apologies. I hope I haven't given everyone in the courtroom
17 this cold. And there is no assurance that that won't
18 flare-up again, but I would like to see if we can complete
19 the hearing. And if you would proceed.

20 MS. BAGNELL: Thank you, Your Honor.

21 Before the break, we had just introduced Exhibit 8, Your
22 Honor. And I would offer that into evidence.

23 THE COURT: It's received on a provisional basis
24 as was the prior exhibit.

25 MS. BAGNELL: Your Honor, rather than going

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1 through each and every parcel, I was planning on just asking
2 Mr. Goldman for the total cumulative value, in the interest
3 of time, unless the Court would prefer to hear testimony as
4 to each parcel.

5 THE COURT: I suppose if Mr. Goldman is not going
6 to tell us anything more than what he already has. As I
7 understand, he says that he's visited each one of these
8 properties.

9 MS. BAGNELL: Yes, Your Honor.

10 THE COURT: He has not walked the land on the
11 properties. So he hasn't been over the entirety of the
12 easement, but he has been at the locale of the property, and
13 has used comparables to reach these figures.

14 MS. BAGNELL: Yes, Your Honor.

15 THE COURT: And it seems to me it's just as well
16 for you to go ahead and proceed on a summation basis.

17 BY MS. BAGNELL:

18 Q. Mr. Goldman, what would you estimate is the total
19 cumulative amount in the diminution in property value for
20 the remaining tracts?

21 A. It's \$413,800.

22 Q. And do you give this opinion to a reasonable degree of
23 certainty?

24 A. Yes, ma'am.

25 MS. BAGNELL: I have nothing further, Your Honor.

GOLDMAN - CROSS- CLARKE

1

CROSS-EXAMINATION

2

BY MR. CLARKE:

3

Q. Good afternoon, Mr. Goldman.

4

A. Good afternoon.

5

Q. I'm Stephen Clarke, and we met just briefly before, but
6 I represent Mountain Lair, LLC.

7

8

9

THE COURT: Well, let me ask you, what's the
status of that matter now? I had hoped that it was going to
be worked out.

10

MR. CLARKE: With regard to my client, Your Honor?

11

THE COURT: Yes.

12

13

14

MR. CLARKE: We have entered into negotiations
with MVP, but, as yet, have not reached an agreement with
them.

15

16

THE COURT: And those negotiations were for the
purpose of rerouting the easement or --

17

18

19

20

MR. CLARKE: No. My understanding, and I think
what Ms. Bagnell told the Court on Friday, is that the route
is as proposed and as approved by FERC. So that's my
understanding of the route.

21

22

23

THE COURT: Thank you. You understand that
Mountain Valley wishes to take the easement as it appears in
the FERC approval?

24

MR. CLARKE: That's correct.

25

THE COURT: And you, I think, on behalf of

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1 Mountain Lair inquired of them about rerouting it?

2 MR. CLARKE: My client had concerns about the
3 pipeline route as proposed, and as approved by FERC going
4 through some sinkholes on his property. But Mountain Valley
5 Pipeline says that that's constructable, so --

6 THE COURT: So it looks as though, then, there is
7 no likely resolution by agreement on that locale?

8 MR. CLARKE: No, Your Honor. I think we've moved
9 on to monetary negotiations.

10 THE COURT: Very good. Please go ahead.

11 MR. CLARKE: Thank you, Your Honor.

12 BY MR. CLARKE:

13 Q. Mr. Goldman, you were contacted by MVP's attorney
14 sometime in the summer of 2017; is that right?

15 A. Yes.

16 Q. And at that time, you were asked to prepare appraisals,
17 correct?

18 A. Yes.

19 Q. And, specifically, you were asked to appraise over a
20 hundred different properties which were potentially to be
21 acquired by MVP for this pipeline; isn't that right?

22 A. Yes.

23 Q. And, in fact, you ultimately valued, I think, over 120
24 properties; is that right?

25 A. Yes.

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1 Q. And you did that for a fee of \$1,200 per property,
2 correct?

3 **A.** Yes.

4 Q. So that works out -- if my math is right -- to \$144,000
5 in fees just for the appraisal work for MVP; is that
6 correct?

7 **A.** Yes.

8 Q. Now, when you began your assignment, what was your
9 scope of work?

10 **A.** The scope of work was to conduct an appraisal of the
11 individual properties, with some limitations as far as
12 access to the property owner and access to the property
13 itself, but, otherwise, the normal scope of work that would
14 be used for any appraisal assignment.

15 Q. And did you come up with that scope of work or was that
16 given to you by MVP?

17 **A.** I defined the scope of work.

18 Q. Now -- and I think you testified to this, but just to
19 confirm -- for each of those 120-plus properties you
20 appraised, you maintained a work file; is that correct?

21 A. Yes.

22 Q. And I think you testified to this, as well, but you
23 didn't actually set foot on any of those properties that you
24 appraised for this case; isn't that right?

25 A. That's correct.

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1 **Q.** And, in fact, on some of them, you didn't -- some of
2 them you viewed from the public road, correct?

3 **A.** All of them would have been from a public road, and, in
4 some cases, they were removed from the public road.

5 **Q.** So your testimony is you viewed all of the properties
6 from a public road?

7 **A.** As close as I could.

8 **Q.** Okay. Do you have your report in front of you now?

9 THE COURT: Before you go on, what do you mean by
10 "as close as I could"?

11 THE WITNESS: In some instances, the property that
12 was subject to the pipeline was up on a ridgeline and never
13 crossed a public road, so I couldn't physically see the
14 section for a specific property, because it was on a
15 ridgeline that might have been several hundred yards away
16 from where the public road was.

17 THE COURT: Do you know how many properties of
18 these you didn't see?

19 THE WITNESS: I do not.

20 THE COURT: Well, don't your records or notes show
21 that?

22 THE WITNESS: Yes. I could give you that answer.
23 I don't know it while I am here. Because some of these
24 properties that I couldn't see may have been acquired since
25 I did the initial work.

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1 THE COURT: You don't have a file with you today
2 that would tell you which properties you couldn't see?

3 THE WITNESS: No, sir.

4 THE COURT: Please go ahead.

5 MR. CLARKE: Thank you, Your Honor.

6 BY MR. CLARKE:

7 **Q.** Mr. Goldman, do you have your copy of the report? I
8 think it's been introduced as MVP Exhibit Number 7. Do you
9 have that in front of you?

10 **A.** I do.

11 **Q.** I'm going to ask you to turn to page 5 of that
12 document, page 5 of your report.

13 **A.** (Witness complies.)

14 **Q.** Are you there?

15 **A.** I am.

16 **Q.** In the first column on the left-hand side, about
17 two-thirds of the way down there is a sentence that says,
18 "The site observations were conducted by Todd Goldman."

19 Do you see that?

20 **A.** Yes.

21 **Q.** All right. And it says, continuing on, "The site
22 observations were conducted by Todd Goldman during June and
23 July 2017, to the extent possible, from public access
24 points. In many cases, properties cannot be thoroughly
25 reviewed from public access points and the right-of-way may

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1 be somewhat removed from the public roads."

2 And then it goes on to say, "Google Earth and software
3 package provided by the client were instrumental in
4 understanding the location of the right-of-ways relative to
5 the parcel boundaries and important parcel characteristics."

6 Did I read that correctly?

7 **A.** You did.

8 **Q.** And I think you just answered the Court's question.
9 But there were some amount of parcels you can't say today
10 you didn't actually view from the right-of-way, correct?

11 **A.** I could see the properties, but I was not in close
12 proximity to them is probably the best way to characterize
13 it.

14 **Q.** Okay. And for those properties, you put maybe some
15 more reliance, I take it, on the alignment sheets that MVP
16 provided to you; is that correct?

17 **A.** I would have had the alignment sheets, Google Earth,
18 topographical maps, things of that nature.

19 **Q.** And those alignment sheets are the kind of overhead
20 plan view of the proposed improvements that are sort of
21 superimposed on an aerial or a satellite image; isn't that
22 correct?

23 **A.** Yes.

24 **Q.** And it also has parcel boundaries, I guess, may be
25 taken from tax records or something; isn't that right?

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1 **A.** Yes. I also had access to what is called a KMZ file,
2 which is a Google Earth file. So in that case they have the
3 shake files for the parcels that were impacted superimposed
4 on satellite imagery, with the route superimposed on top of
5 that.

6 **Q.** And those Google Earth files, they don't show the
7 topography for the properties; isn't that right?

8 **A.** That's true.

9 **Q.** Now, did you get a legal description of the properties
10 that you were appraising from MVP?

11 **A.** For the actual routes?

12 **Q.** For the 120 properties you testified you appraised, did
13 you get from MVP a legal description of those parcels?

14 **A.** We got legal descriptions on a number of them, but we
15 also pulled deed references that were referenced in the tax
16 records. So those would have been the legal descriptions
17 for those particular tracts.

18 **Q.** And did you get those for all of the 120-plus parcels
19 you were appraising?

20 **A.** Yes.

21 **Q.** And you didn't, I take it, meet with the owners of any
22 of these properties, correct?

23 **A.** That's correct.

24 **Q.** You didn't contact the owners of any of these
25 properties, correct?

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1 **A.** That's correct.

2 Q. Did MVP ask you not to do that?

3 **A.** Yes.

4 Q. And you agreed to not do that, correct?

5 **A.** Yes.

6 Q. Would you agree with me, though, that the owner is a
7 lot of times a chief source of information when you're
8 appraising real property, right?

9 **A.** Yes.

10 Q. The owner knows a lot about how the property's been
11 used, correct?

12 **A.** Yes.

13 Q. The owner knows about maybe some planned improvements
14 or changes that may be in the works for the properties,
15 correct?

16 A. Yes.

17 Q. The owner may know some of the sales history or rental
18 history or things like that about his or her property,
19 correct?

20 A. Yes.

21 Q. And you didn't get any of that information, because you
22 didn't meet or talk to any of the landowners, correct?

23 A. That's correct.

24 Q. And I think you testified that you didn't -- you didn't
25 walk on the area of the proposed pipeline on these

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1 properties, correct?

2 **A.** That's correct. I didn't trespass.

3 **Q.** You didn't ask anyone's permission to walk on their
4 properties, correct?

5 **A.** That's correct.

6 **Q.** And in your report, did you specifically identify the
7 topography of each of the properties that you were
8 appraising?

9 **A.** I believe I did. I'd have to look at each write-up to
10 tell you with certainty, but that's something that was part
11 of the general write-up, because it's part of the highest
12 and best use.

13 **Q.** When you talk about the write-ups, you're talking about
14 the sort of one-paragraph summaries that you provided in
15 this report, I think, basically, beginning on page 28; is
16 that right?

17 **A.** Yes.

18 **Q.** And so your testimony is that in those one paragraphs
19 that you wrote up for each of these properties at issue,
20 that you identified the topography of those properties?

21 **A.** I would have to go property-by-property to say for sure
22 that the topography is addressed. But it is definitely
23 something that was used as part of the determination of
24 which comparable sales were appropriate.

25 **Q.** Well, let's look at the, at these -- I want you to

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1 maybe look at a few and tell me if it addresses the
2 topography. And let's start with the first one on page 28.
3 Do you see that?

4 **A.** Yes.

5 **Q.** Looks like the owner is C. L. Keener. Would you tell
6 me whether the description of the paragraph you've written
7 with regard to that property describes the topography?

8 **A.** It does not describe the topography.

9 **Q.** The next paragraph -- or the next property down, does
10 that write-up describe the topography of that property?

11 **A.** It does not.

12 **Q.** Okay. Can you point to me, to any of these write-ups
13 that do describe the topography of the properties you're
14 appraising?

15 **A.** The next one does. It says, "Where the terrain is
16 steeper."

17 **Q.** Okay. So it's fair to say --

18 THE COURT: I missed that. Which one are you
19 referring to?

20 THE WITNESS: On Bates stamp 10556, which is the
21 Silas Steven Tucker property.

22 THE COURT: Yes. What did you call that?

23 THE WITNESS: About eight lines down, it says,
24 "Where the terrain is steeper."

25 THE COURT: Thank you.

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1 BY MR. CLARKE:

2 Q. It's accurate to say that you may have described
3 topography on some of these, and you certainly didn't
4 describe it on all of these write-ups; isn't that correct?

5 A. From our sample of three, that's correct.

6 Q. Well, I mean, if you want to go through all of them, we
7 can go through all of them. I don't want to belabor the
8 point, but I'm trying to understand what you've done here.
9 And it seems like there is some that have no description,
10 and some that have a limited description. Would you agree
11 with me on that?

12 A. As far as topography goes, yes.

13 Q. All right. And you didn't identify the soils on the
14 properties, did you?

15 A. No.

16 Q. You didn't include specific vegetation, timber, or
17 crops in your valuation, did you?

18 A. In the discussions, generally, I would call it woodland
19 if it were wooded, but not by species, and if there was
20 pastureland, it was generally hayfields, and I probably
21 referred to it as such.

22 Q. But you would agree with me that timber is a crop and
23 has value, correct?

24 A. I don't know that it's a crop in the legal real estate
25 terminology, but it does have value if it's merchantable.

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1 **Q.** Well, sometimes there are properties that are sold in
2 this area for their timber; isn't that right?

3 **A.** That's true.

4 **Q.** Now, I think you testified earlier that you did include
5 a value of the timber in your valuation by using comparable
6 sales that also had timber on them; is that correct?

7 **A.** Yes.

8 **Q.** All right. Would you turn with me to page 7 of your
9 report, Exhibit 7. And the, I guess, the third item --
10 excuse me -- the fourth item down says, "Some properties
11 include timberland." Do you see that?

12 **A.** Yes.

13 **Q.** Would you read that section for the Court?

14 **A.** "Some properties include timberland and there is no way
15 for the appraiser to analyze the contributory value of the
16 timber. A Registered Professional Forester will have to
17 opine regarding the contributory value of any timber,
18 particularly if it has significant merchantable value."

19 **Q.** Thank you. And you didn't consult with a Registered
20 Professional Forester about timber value, correct?

21 **A.** I did not.

22 **Q.** You didn't analyze the potential value of mineral
23 deposits on these properties; isn't that right?

24 **A.** That's correct.

25 **Q.** And it's true, also, that for many of these properties,

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1 you did not even identify the improvements that are on those
2 properties; isn't that right?

3 **A.** If they were in -- or in near the right-of-way, then I
4 would have discussed them. If they were removed from the
5 right-of-way, I would not have.

6 **Q.** How far -- or, excuse me -- how close to the pipeline
7 right-of-way did an improvement have to be for you to
8 warrant discussion of it in your report?

9 **A.** It's case-by-case, because the proximity to the
10 pipeline right-of-way would have impacted whether it was
11 included or not. Probably 200 feet would be a reasonable
12 distance, if I had to choose.

13 **Q.** But is that what you actually applied, or are you
14 saying you just sort of -- you looked at each individual
15 property on a case-by-case basis?

16 **A.** It was case-by-case. I didn't measure anything to
17 determine which improvements needed to be discussed and
18 which ones did not.

19 **Q.** And you really chose to value land for the vast
20 majority of these properties, land only; isn't that correct?

21 **A.** Yes.

22 **Q.** And, in fact, you explained that you didn't use the
23 Cost Approach to valuing properties, because it was only
24 useful or would only be useful in valuing improved
25 properties that included improvements that existed for less

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1 than half of their original economic life, correct?

2 **A.** Yes.

3 **Q.** And so you had, I think, over a hundred comparable
4 sales in your -- in your report in one of the addenda,
5 correct?

6 **A.** Yes.

7 **Q.** And of those, how many were improved sales?

8 **A.** I do not recall.

9 **Q.** Does three sound right?

10 **A.** Yes. There was a particular property that had a
11 structure on it that needed to be dealt with as far as
12 valuation, and that's why those three sales are there.

13 **Q.** And even when you found that properties did have
14 improvements, you didn't value them; isn't that correct?

15 **A.** It depends. In the one example that we were just
16 talking about, there was a house that was very close to the
17 pipeline that I felt was impacted by the pipeline, and
18 that's why those comparable sales are there. But,
19 otherwise, it's common appraisal practice, if an improvement
20 is not impacted by the project, and it's going to have the
21 same before and after value, that it's not valued.

22 **Q.** But there is no way for you to know whether it will
23 have the same before and after value without valuing it,
24 correct?

25 **A.** Well, sure there is. It's all based on highest and

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1 best use.

2 **Q.** Okay. Well, let's talk about highest and best use.

3 Where in your report did you state your determination of the
4 highest and best use of these properties you were
5 appraising?

6 **A.** There is not a specific section that's going to address
7 the highest and best use of each tract. But within that
8 write-up, there is an inferred highest and best use as to
9 the maximum value that the property would create based on
10 the use -- or there is the comparable sales that are
11 appropriate based on the highest and best use that creates a
12 maximum value.

13 **Q.** So there is not a specific reference to the highest and
14 best use of any of the properties you appraised, but you're
15 saying that it can be inferred from the report; is that
16 right?

17 **A.** Based on the property types. And in this write-up or
18 in the write-ups, when there is discussion about cropland,
19 woodland, these properties have the same highest and best
20 use before and after the project. So the woodland -- the
21 woodland subject properties have the highest and best use to
22 continue to be used for woodland.

23 **Q.** Well, you would agree with me that the highest and best
24 usage analysis is really one of the most important factors
25 in appraising property, correct?

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1 **A.** It is.

2 **Q.** I mean, if you get the highest and best use wrong, then
3 your value's probably going to be wrong, unless you just get
4 lucky, correct?

5 **A.** Yes.

6 **Q.** And the highest and best use test is -- and you talked
7 about it -- there is four factors, correct?

8 **A.** Yes.

9 **Q.** And it's sort of an exclusionary test, correct, you
10 start with sort of the whole universe of possible uses and
11 then you refine it down, refine it down, refine it down to
12 the maximally productive use, correct?

13 **A.** Correct.

14 **Q.** And so that analysis for any of these properties did
15 not find its way into your report, correct?

16 **A.** It's not written in the report, that's true.

17 **Q.** So somebody coming along and trying to understand your
18 report would not be able to understand your highest and best
19 usage without looking at your work file; isn't that correct?

20 **A.** Yes.

21 **Q.** And your work file wasn't turned over to MVP for
22 disclosure in this case, was it?

23 **A.** No one ever requested it, but, no.

24 **Q.** I want to ask you to turn to page 47, and that is of
25 exhibit, Plaintiff's Exhibit Number 7. And that includes a

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1 write-up about the property that's owned by my clients,
2 Mountain Lair LLC. Do you see that?

3 **A.** I do.

4 **Q.** And in your write-up there, you state -- and this is
5 probably about five lines from the bottom -- "There is
6 reported to be a single-family dwelling containing 2,272
7 square feet." Correct?

8 **A.** Correct.

9 **Q.** So that was something that somebody told you or you
10 read somewhere?

11 **A.** It would have been from public records from the
12 assessor.

13 **Q.** You didn't actually see that residence?

14 **A.** I don't recall.

15 **Q.** And you don't know anything about the construction of
16 that residence, if it does exist, correct?

17 **A.** That's true.

18 **Q.** You didn't -- it goes to say you didn't take any
19 measurements of it, correct?

20 **A.** That's true.

21 **Q.** You didn't go inside it, right?

22 **A.** That's correct.

23 **Q.** You didn't try to determine the actual or the effective
24 age of the improvements there, correct?

25 **A.** That's correct.

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1 Q. You didn't try to determine the type or the quality of
2 the construction of it, correct?

3 | **A.** Correct.

4 Q. You didn't determine its present use or occupancy,
5 correct?

6 **A.** Correct.

7 Q. You didn't consider the interior finishes, right?

8 **A.** That's correct.

9 Q. You didn't consider the type and condition of the roof,
10 correct?

11 **A.** Yes.

12 Q. And you also didn't value any of the site improvements
13 on that property; isn't that correct?

14 A. That's correct.

15 Q. You didn't determine whether there was fencing that
16 contributed value to the property, correct?

17 **A.** There was fencing on the property -- I do happen to
18 recall that piece of property. The comparable sales that
19 would have been used in that example would have had similar
20 site improvements.

21 Q. Now, talking about your comparable sales, you -- what
22 appears to me from your report for each of these write-ups
23 that you made, you selected a handful of comparable sales
24 from your addenda that you said you would use, I guess, to
25 value them; is that correct?

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1 **A.** Yes.

2 **Q.** And you didn't do any sort of adjustments to those
3 comparable sales, or at least you didn't report any of those
4 in your appraisal; isn't that right?

5 **A.** That is correct.

6 **Q.** Did you prepare an adjustment grid for these comparable
7 sales?

8 **A.** No.

9 **Q.** Did you adjust the sales at all?

10 **A.** If there were adjustments, they would have been
11 qualitative rather than quantitative.

12 **Q.** And did you report those qualitative adjustments in
13 your appraisal report?

14 **A.** No.

15 **Q.** So I take it you got information on the parcel's size
16 with the acreage of the parcels that you were appraising,
17 correct?

18 **A.** Yes.

19 **Q.** Did you also analyze the concept of the larger parcel
20 of the parent tract?

21 **A.** Not on these particular parcels, no.

22 **Q.** And you know what I mean when I say that, I'm talking
23 about additional parcels, separate tax parcels that are
24 owned by the same owner and have the same highest and best
25 use, and are adjacent to these parcels, correct?

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1 **A.** Yes, I understand the concept of larger parcel.

2 Q. And you didn't do that analysis for these properties?

5 Q. And now, did you form opinions of highest and best use
6 for these properties you were appraising both as vacants
7 and as improved -- or as if vacant?

8 **A.** They are frequently the same. These properties by the
9 nature of their location are used for very few options,
10 which are residential, agricultural, and recreational. And
11 so they would be the same before and after. The only reason
12 -- I'm sorry -- before, improved or unimproved, the only
13 difference between being the improvements, if they're
14 liveable residences, then they would have the highest and
15 best use that would include single-family residential. But
16 these large tracts of land frequently have multiple or
17 comingled, is what I usually refer to as, highest and best
18 uses.

19 Q. You agree with me that there can be properties that are
20 not being put to their highest and best use by their current
21 owners, correct?

22 **A.** On occasions, there are.

23 Q. And that's part of the reason you appraise using the
24 highest and best use test; it's not the current use, it's
25 the highest and best use that's to be appraised, correct?

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1 **A.** Yes.

2 **Q.** And you didn't consider that as a possibility in any of
3 the properties you valued in this appraisal, correct?

4 **A.** Well, I did, to the extent that these properties have
5 very few options as far as what their maximally productive
6 uses can be. And if you're referring to some type of
7 speculative project, as far as a subdivision or something
8 like that, I did not consider that, because that's not, in
9 my opinion, a highest and best use of properties that are in
10 this -- these areas.

11 **Q.** Well, some of the properties could have had the highest
12 and best use for some sort of mining purposes; isn't that
13 right?

14 **A.** They could. I mean, that's a mineral component that I
15 would not have considered.

16 **Q.** So you didn't investigate that as a potential highest
17 and best use, right?

18 **A.** Mining, in particular? No, sir, I didn't.

19 **Q.** Now, you said in your report -- you testified earlier
20 that you complied with the Uniform Standards of Professional
21 Appraisal Practice, correct?

22 **A.** Yes.

23 **Q.** And that you called it USPAP, and I'll probably call it
24 USPAP, too. And you complied with Standards 1 and 2 of
25 USPAP, correct?

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1 **A.** Correct.

2 **Q.** And Standard 1 deals with the development of a real
3 property appraisal, correct?

4 **A.** Right.

5 **Q.** And Standard 2 deals with the reporting of a real
6 property appraisal, right?

7 **A.** Yes.

8 **Q.** Now, one of the things that's required by Standard 1 is
9 for you to look at all sales of the properties you are
10 appraising within, I think, three years prior to the
11 effective date of the appraisal; isn't that right?

12 **A.** Yes.

13 **Q.** And is that reported in your appraisal report, the
14 sales history of these parcels?

15 **A.** It's not in the report. It would be in my work file.

16 **Q.** But you did that?

17 **A.** Yes.

18 **Q.** And you're also supposed to look at all the listings of
19 those properties, correct?

20 **A.** Yes.

21 **Q.** And that also was not in your report, correct?

22 **A.** It would be in my work file if a property were listed.

23 **Q.** It's not in your report, though, right?

24 **A.** That's correct.

25 **Q.** Now, there are -- Standard 2 allows you -- says there

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1 are basically two different ways to report it; there is an
2 oral report and a written report, correct?

3 **A.** Yes.

4 **Q.** And you did a written report, right?

5 **A.** Yes.

6 **Q.** And within a written report, you can either do just an
7 appraisal report or a restricted appraisal report, correct?

8 **A.** Yes.

9 **Q.** And you did an appraisal report, correct?

10 **A.** Yes.

11 MR. CLARKE: May I approach, Your Honor?

12 THE COURT: Yes.

13 MR. CLARKE: I'd ask these be marked. I'm not
14 sure what number we are on at this point for defendants for
15 identification purposes.

16 THE COURT: 3, if we go consecutively.

17 Mr. Teaney, you had 1 and 2?

18 MR. TEANEY: That's correct, Your Honor.

19 THE COURT: So it is Exhibit 3 okay.

20 MR. CLARKE: That's okay with me, Your Honor.

21 THE CLERK: It's 3.

22 MR. CLARKE: Can I show the witness a copy of
23 this?

24 BY MR. CLARKE:

25 **Q.** Mr. Goldman, I've given you a document that's been

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1 marked for identification purposes Landowner's Exhibit
2 No. 3. And it appears to be, the cover page or the title
3 page, I guess, of the 2016-2017 USPAP, correct?

4 **A.** Yes.

5 **Q.** And then within it -- it's not the entire document, but
6 what I've tried to do is put a Standard 1 and Standard 2
7 together there. Do you see that?

8 **A.** Yes.

9 **Q.** All right. And I think you said earlier, but you agree
10 with me that you consider USPAP to be authoritative in your
11 field, correct?

12 **A.** Yes.

13 **Q.** Now, if you'll turn with me to -- excuse me -- I'm
14 sorry, I've lost my place here, Your Honor. To page 24, of
15 this document. Mr. Goldman, it appears that part of the
16 Standard 2, Standards Rule 2-2, and subsection VIII, Roman
17 Numeral VIII. Do you see that?

18 **A.** Yes.

19 **Q.** And if you actually go back to page 22, the beginning
20 of that talks about -- excuse me -- the top of page 23, it
21 says, "The content of an Appraisal Report must be consistent
22 with the intended use of the appraisal and, at a
23 minimum," -- and then it lists a number of different
24 subsections, correct?

25 **A.** Yes.

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1 **Q.** So subsection VIII, Roman Numeral VIII, would you read
2 what it says there?

3 **A.** "Summarize the information analyzed, the appraisal
4 methods and techniques employed, and the reasoning that
5 supports the analyses, opinions, and conclusions; exclusion
6 of the sales comparison approach, cost approach, or income
7 approach must be explained."

8 **Q.** All right. In the comments underneath that, the VIII,
9 the third paragraph in that comments says, "When reporting
10 an opinion of market value, a summary of the results of
11 analyzing the subject sales, agreements of sales, options,
12 and listings in accordance with Standards Rule 1-5 is
13 required." Do you see that?

14 **A.** I do.

15 **Q.** So that's required to be part of your appraisal report,
16 correct?

17 **A.** Yes.

18 **Q.** And then it goes on to say in the comments, "If such
19 information is unobtainable, a statement on the efforts
20 undertaken by the appraiser to obtain the information is
21 required." Correct?

22 **A.** Yes.

23 **Q.** And then it says, "If such information is irrelevant, a
24 statement acknowledging the existence of the information and
25 citing its lack of relevance is required." Correct?

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1 **A.** Yes.

2 **Q.** You didn't do that in your report, correct?

3 **A.** No, I did not.

4 **Q.** And if you'll turn with me to the next page, page 25.

5 Roman Numeral X at the top of that page. Again, this is
6 talking about what needs to be in the appraisal report,
7 correct?

8 **A.** Yes.

9 **Q.** And that says -- Roman Numeral X says, "When an opinion
10 of highest and best use was developed by the appraiser,
11 summarize the support and rationale for that opinion."

12 Correct?

13 **A.** Yes.

14 **Q.** Again, that summary and rationale for that opinion as
15 to these individual properties is not in your report?

16 **A.** It is not.

17 **Q.** If you'll turn with me back to page 17, looking at
18 Standard 1. And Standards Rule 1-1, says, "In developing a
19 real property appraisal, an appraiser must," -- and then
20 subsection (b) says, "not commit a substantial error of
21 omission or commission that significantly affects an
22 appraisal."

23 Do you see that?

24 **A.** Yes.

25 **Q.** So that's a requirement of performing the appraisal

GOLDMAN - CROSS- LOLLAR

1 that you not commit any substantial error of omission or
2 commission, correct?

3 **A.** Yes.

4 **Q.** And subsection (c) says that you must not render
5 appraisal services in a careless or negligent manner, such
6 as by making a series of errors that, although individually
7 might not significantly affect the results of an appraisal,
8 in the aggregate affects the credibility of those results.

9 Do you see that?

10 **A.** I do.

11 **Q.** And it's your testimony today that you complied with
12 that Standard under USPAP?

13 **A.** That information is in my work file, so it's not as if
14 it was omitted. It's not in the report.

15 **Q.** But you admitted that some of the information that
16 USPAP says has to be in the report was not in your report,
17 correct?

18 **A.** That's true.

19 MR. CLARKE: That's all the questions I have.
20 Thank you.

21 **CROSS-EXAMINATION**

22 **BY MR. LOLLAR:**

23 **Q.** Good afternoon, Mr. Goldman.

24 **A.** Good afternoon.

25 **Q.** Or good evening, I should say, rather. Getting to that

GOLDMAN - CROSS- LOLLAR

1 time here. When did you first begin on this appraisal
2 assignment?

3 **A.** It would have been May, possibly. The work -- the
4 information I was getting kind of trickled in at the
5 beginning. I couldn't give you a specific date.

6 **Q.** Well, so you think you started in May?

7 **A.** I think that would be a reasonable estimate.

8 **Q.** When did you finish?

9 **A.** The report was sent out in September.

10 **Q.** I am trying to do the math here. Four to five months?

11 **A.** Yes.

12 **Q.** In your -- I know you said you've been an appraiser for
13 20 years, correct?

14 **A.** 24.

15 **Q.** And in your experience as an appraiser for 24 years,
16 have you ever had to appraise this many properties in such a
17 short period of time?

18 **A.** No.

19 **Q.** So this would be a first for you?

20 **A.** As far as the volume, yes.

21 **Q.** And you would agree that sometimes typical appraisals
22 can take months on their own to appraise one piece of
23 property, right?

24 **A.** Not months, but maybe a week or two.

25 **Q.** Well, maybe I need to talk to your office, because I

GOLDMAN - CROSS- LOLLAR

1 can never get my appraisers to finish their appraisals in
2 more than a few months -- or less than a few months, rather.

3 Mr. Goldman, I want to ask you, what is -- as far as an
4 eminent domain case, what is your idea of what just
5 compensation would be?

6 **A.** The rights that the property owner has given up.

7 **Q.** And isn't it true that you also have to factor in
8 damages or diminution in value? I know it's a lot of
9 different terms for that, but damages to the remainder of
10 the property?

11 MS. BAGNELL: Objection to the extent he's seeking
12 a legal conclusion.

13 MR. LOLLAR: Your Honor, may I respond?

14 THE COURT: You may inquire.

15 MR. LOLLAR: Damages to the remainder, that is a
16 complete appraisal concept. It is completely within his
17 purview.

18 THE COURT: You've already won the point.

19 BY MR. LOLLAR:

20 **Q.** So you would agree that determining damages is an
21 integral part of the appraisal process?

22 **A.** Yes.

23 **Q.** And in some cases, actually, the just compensation can
24 be a lot more in damages than actually in the easement
25 taken; isn't that true?

GOLDMAN - CROSS- LOLLAR

1 **A.** Could be.

2 **Q.** And you appraised as part of this assignment 120
3 different properties?

4 **A.** Yes.

5 **Q.** And isn't it true out of those 120, you came to the
6 conclusion that there were only damages or diminution in
7 value to only -- to the remainder to only four properties?

8 **A.** Yes.

9 **Q.** So four out of 120?

10 **A.** Yes.

11 **Q.** That's not a lot? You would agree with me on that?

12 **A.** True.

13 **Q.** I want to turn specifically to a few different of my
14 clients in this case, Mr. Goldman. Are you familiar with
15 the Miller property?

16 **A.** Can you refer me to a page?

17 **Q.** I don't think it's actually -- I don't have the -- I'm
18 referring to the plat right now. It would be WV-MO-012.265.
19 I can bring you all these if you would like to look at them.

20 **A.** Tell me the parcel ID again.

21 **Q.** Sure. WV-MO-012.265.

22 MR. LOLLAR: Your Honor, I apologize, I don't have
23 copies for opposing counsel, but these are all in the plats
24 that they provided to the landowners as part of the lawsuit,
25 so I do believe that they would have a copy.

GOLDMAN - CROSS- LOLLAR

1 THE COURT: Are you aware of what's being spoken
2 about?

3 MS. BAGNELL: I'm not sure exactly what you're
4 talking about.

5 MR. LOLLAR: Three parcels relating to some of my
6 clients.

7 MS. BAGNELL: The exhibits from the complaint.
8 That's fine. I'm sorry, can you -- C-48 and it's Norvel
9 Mann?

10 MR. LOLLAR: Just for the record, Your Honor,
11 Norvel Mann, and then there's multiple parcels, James Gore,
12 and then also Stephen and Melanie Miller.

13 Take as much time to look at that as you need.

14 MS. BAGNELL: Okay. Thank you.

15 MR. LOLLAR: Your Honor, may I approach the
16 witness?

17 THE COURT: Yes, you may.

18 BY MR. LOLLAR:

19 Q. Mr. Goldman, I'm handing you a copy of three different
20 plats.

21 THE COURT: If you would, let me see a copy of
22 that.

23 MR. LOLLAR: I apologize. I don't have any
24 additional copies.

25 THE COURT: Just one moment.

GOLDMAN - CROSS- LOLLAR

1 MR. LOLLAR: Those are all the plats that MVP
2 provided as part of the lawsuit in this case. And I just
3 chose three different properties -- three different parcels
4 of some of the clients that I have in this case.

5 Your Honor, actually I was thinking if we could publish
6 those for the Court, then maybe that would help opposing
7 counsel, as well as the witness, as well as myself. I don't
8 know if that's possible.

9 THE COURT: Do you want to exhibit these to your
10 fellow landowner attorneys?

11 MR. LOLLAR: I think they have copies. I was
12 wondering if there was any way to publish those exhibits? I
13 don't know if there is. If not, I'll just have the witness
14 refer to them.

15 THE COURT: You may proceed with the witness.

16 BY MR. LOLLAR:

17 **Q.** Mr. Goldman, let me know when you've had an opportunity
18 to finish reviewing those.

19 **A.** I'm not sure what you want me to look at them.

20 **Q.** Just become familiar with them.

21 **A.** Okay.

22 **Q.** Those are three large parcels of property; correct?
23 One of them is 66 acres; I think the other one might be over
24 a hundred acres?

25 **A.** There is 67, 20, and 37.

GOLDMAN - CROSS- LOLLAR

1 **Q.** Okay. You would consider those to be larger parcels
2 than your typical appraisal?

3 **A.** Not for this area. These are down in Linside. That's
4 pretty common.

5 **Q.** Fair enough. And in all of those cases, the pipeline
6 is going directly through the middle of the property; isn't
7 that correct?

8 **A.** They don't show the entirety of the property, so I
9 don't know.

10 **Q.** Well, from what you can gather on those plats?

11 **A.** I can't -- it's not a whole map of the property.

12 **Q.** So then -- but you reviewed those plats in coming to
13 your determination in this case, correct?

14 **A.** I would have used the KMZ file, which is a digital
15 version, which has the entire parcel overlaid, Google Earth
16 overlaid with the pipeline.

17 **Q.** And you would agree that for some of our clients, they
18 had multiple parcels; is that correct?

19 **A.** That's true.

20 **Q.** But in those particular -- those pipelines -- on those
21 parcels, the pipeline is going directly through the middle
22 of the property, according to those plats that you have
23 before you?

24 **A.** These plats are incomplete for me to answer that
25 question. They don't show the entire parcel.

GOLDMAN - CROSS- LOLLAR

1 **Q.** Okay. So you're saying that the plats that you relied
2 on that are provided to you by MVP are inaccurate?

3 **A.** No.

4 **Q.** They don't show the entire parcel?

5 **A.** The KMZ file, the Google Earth files do. That's what I
6 relied on.

7 **Q.** So in none of those cases did you determine that there
8 were damages to the remainder of the property?

9 **A.** That's correct.

10 **Q.** And you talked about Google Earth, and I use Google
11 Earth a lot, and I really appreciate it, because you can go
12 on from your desktop and see the property, but one of the
13 things I'm always very surprised about is when I get onto
14 the property how much different, like Mr. Clarke talked
15 about, as far as the topography of the property can be.
16 You would agree with that, right?

17 **A.** Yes.

18 **Q.** And as he mentioned, you wouldn't be able to test out
19 the soil unless you got on the property, right?

20 **A.** That's correct.

21 **Q.** You wouldn't be able to see if there is any trenches?

22 **A.** That's correct.

23 **Q.** You wouldn't be able to examine the Karst topography?

24 **A.** That's true.

25 **Q.** You wouldn't be able to really understand what kind of

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1 timber is on the property?

2 **A.** That's true.

3 **Q.** And you wouldn't be able to really -- you might not
4 know there is any improvements on the property, but, if
5 there were, you wouldn't be able to get inside and inspect
6 those improvements, would you?

7 **A.** That's true.

8 **Q.** And you -- I know you testified earlier that you never
9 spoke to the owners and you didn't -- I actually want to
10 clarify one point. Did you personally go and visit all
11 these properties or were there other people at your firm
12 that did that?

13 **A.** I did all of the site work or inspection work.

14 **Q.** And as Ms. Bagnell pointed out, while that may not be
15 required, you would agree that speaking with the owner and
16 visiting the property would be good practice as an
17 appraiser?

18 **A.** That's my common practice, yes.

19 MR. LOLLAR: Nothing further. Thank you, Mr.
20 Goldman.

21 THE WITNESS: Yes, sir.

22 **CROSS-EXAMINATION**

23 **BY MR. TEANEY:**

24 **Q.** Good afternoon, Mr. Goldman.

25 **A.** Hi, Mr. Teaney.

GOLDMAN - CROSS- TEANEY

1 MR. TEANEY: Your Honor, a quick housekeeping
2 matter on behalf of Mr. Clarke, as well as my client. I'd
3 like to move for admission of Defendant's 3, which was the
4 uniform standards, the USPAP document that was offered
5 earlier.

6 THE COURT: Any objection?

7 MS. BAGNELL: Your Honor, I would object to the
8 extent that the rules are not evidence. They were used to
9 cross-examine Mr. Goldman, but I don't think they need to be
10 admitted as an exhibit in this case.

11 THE COURT: Anything further on that?

12 MR. TEANEY: Mr. Goldman testified that this is
13 a -- that he's an expert. He testified that this is
14 something that's commonly relied on in his field. I think
15 it's admissible.

16 THE COURT: Exhibit 3 is admitted.

17 **Defendant's Exhibit No. 3 admitted**

18 BY MR. TEANEY:

19 **Q.** Who were intended users of your appraisal report?

20 **A.** It was my client, which was Reed Smith, as well as EQT,
21 MVP, or related entities.

22 **Q.** Okay. Any other intended users?

23 **A.** I'd have to look to tell you for certain. I'm not sure
24 if you're referring to something in particular. But I may
25 have said that part of the regulatory process, that this

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1 would have been available to jurisdictional groups for
2 approval process.

3 **Q.** Right. And I apologize for leaving you hanging there.
4 If you look to page 4 on your scope of work. In the second
5 column there under "Scope of Work," the report says, "This
6 report is intended to be used by the FERC and the
7 jurisdiction controlled by the Federal Court System that
8 will oversee any condemnations filed on behalf of MVP."
9 Is that correct?

10 **A.** Yes.

11 **Q.** If you're going to have more than one intended user of
12 an appraisal report, it has to be an appraisal report,
13 right?

14 **A.** Yes.

15 **Q.** And is that the different -- one of the differences
16 between a restricted report and an appraisal report?

17 **A.** Yes.

18 **Q.** And another difference is that the restricted report
19 will often have things in your work file that's supplemented
20 that the client is familiar with and that's why that's okay
21 to have those separately; is that correct?

22 **A.** Yes.

23 **Q.** So some of the things that are required to be presented
24 and summarized, such as those under 2-2-8 that you and Mr.
25 Clarke discussed, can be in the work file if it's a

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1 restricted report, correct?

2 **A.** Yes.

3 **Q.** So would this be more of the nature of a restricted
4 report or an appraisal report?

5 **A.** I think it's an appraisal report.

6 **Q.** Notwithstanding the fact that it fails to summarize all
7 of the information required by Standard 2-2?

8 **A.** I think that it still adheres in the sense that it --
9 the information that is needed to make a decision about
10 highest and best use, in particular, is within the report.

11 **Q.** Okay. Do you summarize the reconciliations of
12 adjustments, qualitative or quantitative, that you made to
13 be indicators of value?

14 **A.** I did not.

15 **Q.** That's also a requirement under 2-2 for an appraisal
16 report, isn't it?

17 **A.** I'll take your word for it. I don't know the verbiage
18 that's in that requirement, but I will take your word for
19 it.

20 **Q.** Okay. And the Standard 2-2 also requires you to
21 clearly label whether it is -- what type of report it is,
22 correct?

23 **A.** Yes.

24 **Q.** And how many options do you have?

25 **A.** Two.

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1 **Q.** Two. Where in your appraisal report do you comply with
2-2 and identify the type of report it is?

3 **A.** Page 6.

4 **Q.** Can you read for us --

5 **A.** The first bullet point?

6 **Q.** Yes. What does it say there?

7 **A.** "This is a preliminary appraisal report."

8 **Q.** Is a preliminary appraisal report something that is
9 recognized by USPAP as a type of report?

10 **A.** You can use any qualifier you want, as long as you use
11 the appraisal report.

12 **Q.** I understand. Why did you qualify this one as
13 preliminary?

14 **A.** Because I knew that there was going to have to be
15 additional work conducted as the project moved along.

16 **Q.** Okay. And that additional work would include those
17 site visits, conversations with the owners, et cetera?

18 **A.** That's correct.

19 **Q.** Did you consult the Yellow Book before you undertook
20 this effort?

21 **A.** Yes.

22 **Q.** Yes. And is that the reason that you determined the
23 Yellow Book was not required to be used?

24 **A.** Yes.

25 **Q.** Okay. I only have one copy of this as well. I'm in

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1 the same boat as Mr. Lollar. If you'll give me just a
2 moment.

3 MR. TEANEY: May I approach, Your Honor?

4 Thank you.

5 BY MR. TEANEY:

6 **Q.** Mr. Goldman, if I proffered to you that these are
7 excerpts from the Yellow Book, as we've called it, does that
8 seem to be what you have in front of you?

9 **A.** Yes.

10 **Q.** If I could direct your attention to the second page
11 that I handed you, Footnote 186. If you'd take a minute to
12 read that.

13 **A.** (Witness complies.) Okay.

14 **Q.** Did you read that footnote when you consulted the
15 Yellow Book prior to undertaking this exercise?

16 **A.** No.

17 **Q.** No. Now this footnote contemplates determining whether
18 or not Yellow Book applies when a natural gas pipeline is
19 taking a property, doesn't it?

20 **A.** That's what it refers to.

21 **Q.** Right. And it refers to that there may be a split in
22 the jurisdictions. Is that your understanding of what it
23 says there?

24 **A.** Yes.

25 **Q.** Okay. Did you consult with your client, Reed Smith, to

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1 determine whether or not this was a jurisdiction that
2 followed the Federal Rule for Natural Gas Act condemnations?

3 **A.** We discussed the use of Yellow Book in the context of
4 the appraisal, and it was determined, based on the research
5 that I did and conversations with them, that this was not a
6 Yellow Book requirement -- or it was not required to follow
7 the Yellow Book.

8 **Q.** Did they direct you not to use the Yellow Book?

9 **A.** No.

10 **Q.** Now, you based that on your own review of the Yellow
11 Book?

12 **A.** Yes.

13 **Q.** And you did not see this footnote; is that correct?

14 **A.** Correct.

15 **Q.** Okay. Thank you.

16 MR. TEANEY: May I approach? I'll take the
17 document. Thank you.

18 BY MR. TEANEY:

19 **Q.** I'd like to talk about one of the subject properties
20 that belongs to one of my clients. This is -- well, let me
21 take a step back.

22 Do you appraise riverfront properties in your -- in
23 your course of business?

24 **A.** Yes.

25 **Q.** Do you believe that they have certain attributes,

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1 including recreational use, that may affect their value?

2 **A.** Yes.

3 **Q.** And do certain aspects or nature of water access, if
4 you're on the river, if you have a sandy beach, is that
5 better than having a steep bank right up against the river,
6 as far as value?

7 **A.** Yes.

8 **Q.** Okay. I direct you to page 67 of your report, which I
9 believe is Exhibit 7. This is the property belonging to
10 Tammy Calpado and Caitlyn Gragg.

11 **A.** I'm here.

12 **Q.** You're there, okay. Were you able to view this
13 property from the public roads, if you recall?

14 **A.** Yes.

15 **Q.** Yes. Do you know where on the property this pipeline
16 crosses?

17 **A.** It is at the riverfront. This is -- this property, as
18 I recall, has kind of an odd configuration, because it's
19 wider at the road frontage and it may have a dogleg and then
20 it kind of skinnies down and goes all the way to the river.

21 **Q.** Right. So the pipeline emerges from the river crossing
22 on a riverfront access point; is that correct?

23 **A.** Yes.

24 **Q.** Were you able to see the rest of the riverbank from
25 your vantage point?

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1 **A.** I don't recall. I don't remember.

2 **Q.** If someone told you that that was the sole access to
3 the river or convenient access for kayaks or recreational
4 use, that would be important in determining your valuation,
5 right?

6 **A.** Yes.

7 **Q.** Do you know whether that's the case on this property or
8 not?

9 **A.** That that's their only means to access the river is
10 that section of frontage?

11 **Q.** Yes.

12 **A.** Yes, that would be the case.

13 **Q.** That's the case. So you knew that when you did your
14 valuation?

15 **A.** Yes.

16 **Q.** Okay. And you were aware that this property had been
17 sold in the previous three years, correct?

18 **A.** I think that's what I reported in this write-up, yes.

19 **Q.** And then how did you take into account the prior sale
20 when you calculated your valuation of the easement or the
21 take?

22 **A.** It was an improved property, and the improvement that's
23 on the property is removed from where the project will
24 occur. So it's a situation where that structure would have
25 the same before and after, so the contributory value of the

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1 structure was not analyzed.

2 **Q.** Okay. So did the prior sale not go into your
3 calculation of value at all?

4 **A.** That is correct. The reason being is that it was a
5 package property that had both land and the structure. And
6 my analysis of the right-of-way was that the structure was
7 not going to be impacted, so it did not need to be valued.
8 I was strictly valuing the site.

9 **Q.** So you were valuing the site. So you were concerned
10 about the price per acre of vacant land, right?

11 **A.** That's correct.

12 **Q.** Could you have analyzed the sale and determined how
13 much to reduce that sale amount or how much the structure
14 contributed to the sale amount?

15 **A.** You could.

16 **Q.** Did you?

17 **A.** No. It's not the preferred method when you have
18 comparable sales.

19 **Q.** Okay. Let's talk about the comparable sales. You
20 indicate here, I think, that the comparable sales for this
21 property were S23117, F06116, and G261015. Correct?

22 **A.** Yes.

23 **Q.** And are any of those riverfront properties?

24 **A.** I will have to look.

25 **Q.** Sure. If it's assistance to you, I think you can find

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1 them at pages 115, 142, and 217.

2 **A.** Tell me the page numbers again.

3 **Q.** Yes, sir. Page 115 would be F06116.

4 **A.** Okay. And then what were the other page numbers?

5 **Q.** Sure. Page 142 is G261015.

6 **A.** Okay.

7 **Q.** And then the final page 217, and that would be S23117.

8 **A.** Okay.

9 **Q.** Are any of those riverfront properties?

10 **A.** They are not.

11 **Q.** They are not. You do have comparable sales in your
12 addenda that are riverfront properties, correct?

13 **A.** Yes.

14 **Q.** There are also riverfront properties on the Greenbrier
15 River in the vicinity of Ms. Capaldo's property, correct?

16 **A.** Yes.

17 **Q.** How come those were not selected as comparable sales?

18 **A.** Because of the size. Those were much smaller tracts of
19 land. And the Capaldo property was 3.66 acres, and those
20 were in an established subdivision across the river, and
21 they were, I believe, a half-acre in size each.

22 **Q.** Okay. I direct you to -- to page 218 of your report.
23 This is a comparable S27-8-16.

24 **A.** Yes.

25 **Q.** This is not one of those half-acre properties. It's

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1 about 7.8 acres on the riverfront. How come this wasn't a
2 comparable sale for the Capaldo property?

3 **A.** This property was used for a commercial development.
4 That was a recreational vehicle park where they had
5 installed utilities and subdivided it.

6 **Q.** Okay.

7 **A.** The Capaldo property is not of a configuration that you
8 could subdivide it and sell individual parcels, because of
9 the weird configuration.

10 **Q.** Do you think it could be used for a recreational
11 vehicle park even if it weren't subdivided and sold?

12 **A.** You could. But not as easily. This particular
13 property was almost rectangular. It had a long section of
14 frontage on the river instead of a little snippet of
15 frontage.

16 **Q.** Okay. Is there anything in your report that would help
17 the reader understand how you arrived at the price per acre
18 for the Capaldo property based on the comparables that you
19 did identify?

20 **A.** Other than the comparable sales themselves, there is
21 not a discussion about sale one is to be more, sale two
22 should be less. That type of discussion is not the report.

23 **Q.** Are those the things that are typically in an appraisal
24 report?

25 **A.** Usually yes.

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1 **Q.** Usually, yes. Thank you.

2 MR. TEANEY: No further questions, Your Honor.

3 **CROSS-EXAMINATION**

4 **BY MS. ZIEGLER:**

5 **Q.** Good afternoon, Mr. Goldman. My name is Anna Ziegler.
6 I represent some of the property owners affected by this
7 pipeline. You stated earlier that you used the comparable
8 method to come up with a value on the pipeline -- on the
9 easements; is that correct?

10 **A.** Yes.

11 **Q.** So in laymen's terms, a comparable method would be, by
12 way of example, if a person were purchasing a residential
13 house, you would look to other residential houses to find
14 the comparable sales price; is that correct?

15 **A.** Yes.

16 **Q.** Similarly, if someone were purchasing a shopping
17 center, you would look to other shopping centers; is that
18 correct?

19 **A.** Yes.

20 **Q.** If someone were purchasing a pipeline easement, would
21 you not look to other pipeline easements?

22 **A.** That's not the methodology that's commonly used for
23 right-of-way condemnation appraisals. You appraise the
24 before, and you appraise the after, and the difference is
25 the just compensation.

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1 **Q.** If there are right-of-ways which have been purchased in
2 the area, would it not make sense to look to those for the
3 comparables?

4 **A.** That's not the methodology that's adopted for
5 appraisal purposes.

6 **Q.** So is it different than the comparable approach that
7 you just said you used?

8 **A.** No. The methodology that I use in this report is
9 what's been adopted for condemning right-of-ways. The
10 description that you are -- I have no idea of the
11 circumstances and the terms of those sales in regards to
12 what type of compensation might have been paid to avoid
13 legal costs and things that were unique to a specific
14 project that were unrelated to the real property.

15 **Q.** But those are required, would you agree, that in West
16 Virginia, the Declaration of Consideration is required to be
17 included on a deed?

18 **A.** Yes.

19 **Q.** So you would have the consideration available to you;
20 is that correct?

21 **A.** I would have what was stated in the deed.

22 **Q.** So you appraised these properties, basically, we've got
23 three acres that are being impacted on this property, and
24 I'm going to look to see what three acres sold for on
25 another piece of property; is that accurate?

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1 **A.** That's correct.

2 **Q.** But you did not assess the value of the actual -- what
3 Easement A might sell for on one piece of property, you did
4 not use that at all?

5 **A.** I did not use as what you're referencing, no.

6 **Q.** Okay. Did you account for -- we've talked a little bit
7 about a diminished value. Did you account for any future
8 marketability of title issue, diminishment of future
9 marketability of title?

10 **A.** No. I have no way to make a judgement about that.

11 **Q.** You also stated earlier that you used the Multiple
12 Listings Services or the MLS listing systems in several
13 counties. I notice you did not include Summers County in
14 that list. Is that correct?

15 **A.** That's correct. There is no Multiple Listings Service
16 in Summers County.

17 **Q.** Is that a key component in determining -- is that a key
18 component in determining value when you're doing appraisals,
19 using an MLS, an accurate MLS system?

20 **A.** An accurate MLS is important, but the caveat is that
21 brokers that work in Summers County will subscribe to
22 Beckley and also Greenbrier Valley. I belong to those, so I
23 had the benefit of that information.

24 **Q.** Do all of the brokers who work in Summers County
25 subscribe to those?

GOLDMAN - CROSS- ZIEGLER

1 **A.** No. And they don't in Charleston either. That's
2 case-by-case.

3 **Q.** So you did not have the benefit of the Multiple Listing
4 Service specific to Summers County?

5 **A.** Because there isn't one, that's correct.

6 **Q.** Last but not least, did you assess values that came in
7 at less than \$3,000? Were there property values that came
8 in at less than \$3,000?

9 **A.** Of the just compensation?

10 **Q.** Yes.

11 **A.** Yes.

12 **Q.** Yes, just compensation. Do you know approximately how
13 many?

14 **A.** That were less than a thousand?

15 **Q.** Three-thousand?

16 **A.** Less than three-thousand? I do not know the number,
17 no.

18 **Q.** If I told you 20, does that seem about accurate to you?

19 **A.** I really just don't know. If you've counted them, I
20 would agree with you.

21 **Q.** It's actually 21 but --

22 **MS. ZIEGLER:** I have no further questions.

23 Thank you.

24

25

GOLDMAN - CROSS- KIRTLEY

1

CROSS-EXAMINATION

2

BY MS. KIRTLEY:

3

Q. Hi, Mr. Goldman. My name is Courtney Kirtley. I just have a few questions. I represent Paco Land, which is in Nicholas County. Just to start you out, for reference, on page 55 is your summary of that property. I'll let you look at it and then tell me if you're familiar with it.

7

A. Yes.

9

Q. Okay. You stated early on that the Income Approach is not applicable to these properties. Would you briefly explain to me what the Income Approach is and why it would not be applicable?

13

A. Okay. The Income Approach is used when investors are actively seeking out a particular property type with the anticipation of creating revenue from leasing the real property to a third party based on an arm's length transaction and generate enough net operating income to justify the original purchase price or whatever their investment might be.

20

Q. Okay. When you went out to visit this property -- and you state here it had good road frontage. Do you recall that it's along Route 55?

23

A. I do.

24

Q. And are you aware that's the main state road between Summersville and Richwood and Summersville and Webster

GOLDMAN - CROSS- KIRTLEY

1 Springs?

2 **A.** Yes.

3 **Q.** And do you recall if this property -- and you say it
4 was located, oh, borders an access road to Columbia Forest
5 Products. And do you recall on page 27 of your report, I
6 believe it's page 27 -- no, excuse me, page 21. And you
7 have listed the top employers in Nicholas County. Do you
8 see there that Columbia was Number 5 of the employers in
9 Nicholas County?

10 **A.** Yes.

11 **Q.** Do you recall there was another plant located beside of
12 Columbia?

13 **A.** Yes.

14 **Q.** A Jeld-Wen plant?

15 **A.** Yes.

16 **Q.** And, also, you state that it is just north of
17 Craigsville, this piece of property. Do you recall that it
18 was kind of between these two plants and Craigsville on the
19 state highway?

20 **A.** That's true.

21 **Q.** You mentioned that it has some development
22 opportunities. And I don't know, if you weren't on the
23 property and didn't speak to the owner, were you aware that
24 this particular property has high-powered electric and all
25 utilities because of the plants located behind it?

GOLDMAN - CROSS- KIRTLEY

1 **A.** I knew from the infrastructure that was along the road
2 that those were available.

3 **Q.** When you visited this property, did you have with you
4 or did you see staked out where the pipeline would be?
5 Like, when you were looking at the property and driving
6 along the road, could you see where the pipeline would be on
7 the property?

8 **A.** My recollection is that I was using Google Earth with
9 the pipeline overlaid. So as I was approaching it, it was
10 showing my location relative to where the pipeline would
11 cross the property. I don't recall stakes, but maybe they
12 were there.

13 **Q.** Okay. Something of concern to my clients is the exit
14 point of the pipeline is on -- you know, if you recall, the
15 land is kind of hilly and the pipeline is exiting sort of on
16 a rise in the land where it meets the road, which would be
17 kind of a prime entrance to the property. Would something
18 like that affect the value of the property, if it's, you
19 know, the main entrance to it? Actually, excuse me. Let me
20 step back.

21 You say you've appraised properties in pipeline cases
22 before. So -- is that correct?

23 **A.** Yes.

24 **Q.** Are you aware that when -- once the pipeline is in,
25 structures cannot be built on the pipeline and, you know,

GOLDMAN - CROSS- KIRTLEY

1 parking lots and such, and developments can't be placed over
2 top of the pipeline?

3 **A.** Yes, I am aware of that.

4 **Q.** With this particular piece of property -- you said you
5 haven't spoken to the landowners. Were you aware of what
6 this property was -- the intent of the property or what, you
7 know, why the owner had the property?

8 **A.** No.

9 **Q.** And you stated earlier that if you had the chance to go
10 on the property and talk to the landowners, that that could
11 change your opinion as to the value of it. If you were
12 aware that this landowner had carefully considered all of
13 the utilities on the property and had topographical maps
14 drawn up, had talked to tenants about development of the
15 property and made plans for how to level out the property
16 and develop it, would that -- would that change your opinion
17 as to, like, the effect on the residual value of the
18 property?

19 **A.** I would certainly take those opinions into
20 consideration, but they have to be weighed against market
21 realities about the economics in the area and the
22 possibility that there would be any sizable development of
23 the property that would generate revenue. So, sure, that
24 would be helpful information to know. It doesn't mean I
25 would adopt those opinions.

GOLDMAN - CROSS - KIRTLEY

1 **Q.** And one last question. I believe it was the Exhibit 8
2 where you had -- which was a summary of the appraised value
3 of these properties. Was the value listed there what the
4 value you considered the property before the taking and
5 after the taking, the difference in value of the entire
6 tract, or was that a per-acreage value for the easement?

7 **A.** For Paco -- well, for any of these property owners on
8 Exhibit 8, it is the just compensation, which encompasses
9 the value of whatever is going to be used for the project
10 and also any impact to the residue. It's not a unit value.

11 **Q.** Okay. But in looking at the comparable sales, were you
12 looking at the per-acreage value?

13 **A.** Yes.

14 MS. KIRTLEY: I believe that's all I have.

15 THE COURT: Are there other questions of Mr.
16 Goldman? If not, Ms. Bagnell.

17 MS. BAGNELL: Nothing, Your Honor.

18 THE COURT: And with that, Mr. Goldman, thank you,
19 sir.

20 THE WITNESS: Thank you.

21 THE COURT: I don't think we're going to need you
22 further, but I would like for you to remain until we finish
23 the hearing.

24 THE WITNESS: Yes, sir.

25 MR. CLARKE: Your Honor, I would move to strike

1 Mr. Goldman's testimony.

2 THE COURT: Pardon?

3 MR. CLARKE: Your Honor, may I make a motion to
4 strike at this point?

5 THE COURT: Sure.

6 MR. CLARKE: Your Honor, I would just briefly move
7 to strike Mr. Goldman's testimony. I think it's unreliable,
8 inherently unreliable. I think he has admitted to multiple
9 violations of USPAP, which he acknowledged are the standards
10 that govern his practice.

11 He said he followed USPAP, but he also admitted on
12 cross-examination that he didn't include in his report the
13 sales, listings, options, and agreements; he didn't include
14 the reasoning that supports his analysis. He didn't have
15 any adjustment grids for his comparable sales. And I think,
16 most importantly, Your Honor, he doesn't report his
17 conclusions of highest and best use.

18 He admitted that's one of the most important attributes
19 in the appraisal; yet, he left it out of his appraisal.

20 Your Honor, he also admitted he didn't do a lot of
21 things; he didn't go on the properties; he didn't talk to
22 the owners; he didn't inspect improvements; he didn't assess
23 the value of timber; he didn't assess minerals. He didn't
24 even try to contact the owners.

25 Your Honor, the report does not meet USPAP standards,

1 and I think, frankly, it violates Standards Rule 1-1(b) and
2 (c), either one of those, which talk about substantial
3 errors of omission or commission, or rendering appraisal
4 services in a careless or negligent manner, such as by
5 making a series of errors.

6 I think that's been his testimony is that he hasn't
7 complied with USPAP; he's made a series of errors. And I
8 think he said he -- it was unusual for him to have this many
9 properties under appraisal.

10 So for those reasons, Your Honor, we don't think it's
11 reliable testimony, and we ask this Court to strike it.

12 THE COURT: Thank you.

13 MR. CLARKE: Thank you.

14 THE COURT: Anyone else in support of the motion?

15 MR. TEANEY: On behalf of my clients and I believe
16 Mr. Howell's clients, we would join the motion, and
17 emphasize to the Court that the purpose of this evidence was
18 presented to set a bond, which under the *Sage* case, is very,
19 very important. It has a constitutional component to it.
20 And the *Sage* Court allowed Rule 65, allowed immediate
21 possession under Rule 65, because it saw enough comparable
22 provisions between Rule 65 and the Declaration of Taking
23 Act, which is a quick-take act by which federal agencies
24 take land to be assured that it would be constitutional.

25 Under the Declaration of Taking Act, when the

1 government comes to the Court to do a quick-act --
2 quick-take, it has to come in under the Relocation Act with
3 a USPAP compliant appraiser.

4 So to be comparable to the DTA in a *Sage* type case
5 under the Natural Gas Act, the condemnor, the natural gas
6 company should at least have to do the same as the federal
7 government would do under the Declaration of Taking Act.
8 Otherwise, the underpinnings of *Sage*, which found the
9 comparability of Rule 65 and the DTA to be sufficient to
10 protect the landowners, it falls apart.

11 The Rule 65 bond is to provide reasonable, certain and
12 adequate assurance of just compensation. And under the DTA,
13 the Declaration of Taking Act, that is done with a USPAP
14 compliant report.

15 Here, we do not have a USPAP compliant appraisal on
16 which the Court can base the bond, so we don't believe that
17 this evidence would be admissible for the purposes of
18 setting a bond.

19 THE COURT: Thank you.

20 MR. LOLLAR: Your Honor, me and Mr. Stevens'
21 clients both would also join that motion. I think the fact
22 that Mr. Goldman appraised 120 parcels, and only on four of
23 those parcels he determined that there was damage to the
24 residue, now you have giant tracts of land where there will
25 no doubt be restricted development for at least 50 feet of

1 the permanent easement, and then temporarily another 75
2 feet. But Mr. Goldman doesn't think that that affects the
3 damage to the residue at all.

4 So I think, you know, the fact that four out of 120,
5 that really shows you the depth of where he went in his
6 appraisal work.

7 MS. ZIEGLER: On behalf of my clients, I also join
8 in the motion.

9 MR. PATTERSON: Western Pocahontas Properties also
10 joins the motion.

11 MS. KIRTLEY: On behalf of Paco Land, we join as
12 well.

13 THE COURT: Thank you. I think that covers it.
14 Ms. Bagnell.

15 MS. BAGNELL: Yes, Your Honor. I think that Mr.
16 Clarke's description of the testimony mischaracterizes it.
17 Mr. Goldman was clear that he took into account the highest
18 and best use of the properties; that he analyzed market data
19 and comparable sales; that he looked at sales of the
20 properties over the last three years, and then in coming to
21 his opinion of value, which he orally gave in this matter,
22 that he had considered all of those in coming to that
23 conclusion.

24 He's clearly well-qualified as an expert appraiser.
25 There is no requirement for a bond hearing or for the Court

1 to set a bond that an appraisal be done.

2 In fact, the courts that have analyzed this have not
3 required an appraisal. It's not the time for a final
4 determination of just compensation. That occurs at trial.

5 And it is actually the burden of the landowner to
6 present evidence of just compensation.

7 Your Honor, I would argue that it is their burden
8 today, as well, for purposes of the bond, but, regardless of
9 that, the evidence presented by Mr. Goldman is certainly
10 sufficient and admissible for the purposes we're here today,
11 to provide the Court in its discretion information relevant
12 to setting a bond.

13 And I strongly disagree that the testimony should be
14 stricken.

15 THE COURT: Thank you.

16 Mr. Clarke.

17 MR. CLARKE: Thank you, Your Honor. Just briefly.

18 Your Honor, I think what Mr. Teaney said is
19 correct in that this is actually a constitutional
20 requirement. That is the finding of Judge Dillon in the
21 Western District of Virginia in the companion case there.
22 It's a constitutional requirement that the condemnor ensure
23 that the owner be provided with reasonable, certain and
24 adequate provision for obtaining compensation before his
25 occupancy is disturbed.

1 And that's a quote from the *Cherokee Nation* case, Your
2 Honor, which is in our materials. It's an 1890 Supreme
3 Court case. And that quote itself is cited by the Fourth
4 Circuit in the *Sage* opinion.

5 We don't have evidence from MVP that they have certain
6 assets that we could attach against or obtain some sort of a
7 judgment against them if for some reason they were unable to
8 pay an award of compensation. That was a factor in the *Sage*
9 case that the Fourth Circuit considered. Specifically,
10 referencing that ETNG parent company had reported earnings
11 of \$1.17 billion in 2002.

12 We don't have that evidence, Your Honor. MVP has
13 closely held that evidence and has not disclosed that in
14 discovery. So the Court is left with MVP's evidence as to
15 what the just compensation should be.

16 And I agree with Ms. Bagnell, this is not a just
17 compensation trial. But, at the same time, that
18 constitutional requirement is there to ensure that private
19 property owners, these owners in this case, are not left
20 holding the bag if something goes wrong or MVP is unable to
21 pay some amount of just compensation.

22 In cases in which it's the United States Government,
23 the courts have said -- or an entity of the government, the
24 courts have said, well, that's sufficient. We have the full
25 faith and credit of the U.S. Treasury behind the taking

1 here.

2 Here, we have MVP, an LLC that was formed, apparently,
3 for the sole purpose of constructing this pipeline, and we
4 don't know what their assets or liabilities are. Because
5 the appraisal -- because the testimony of Mr. Goldman relied
6 upon an appraisal that in and of itself did not meet the
7 standards of USPAP, we don't think it's reliable evidence on
8 which this Court can base any determination of a bond or a
9 determination that there is reasonable, certain and adequate
10 provision for obtaining compensation before these property
11 owners' possession is disturbed. Thank you.

12 THE COURT: Thank you. Anyone else?

13 MR. TEANEY: If I may address briefly, Your Honor,
14 the burden question. Because it is a constitutional
15 requirement, the burden is on MVP -- or should be on MVP.
16 That was Judge Dillon's conclusion in the Western District
17 of Virginia. The cases that might be cited that suggest
18 that the proponent of the bond in a run-of-the-mill 65(c)
19 case, that the burden should be on the proponent of the
20 bond, those cases are not eminent domain proceedings, so the
21 constitution is not at play, and those cases are typically
22 prohibitory injunctions.

23 This is a case where a private party is seeking to
24 condemn private property. The Constitution requires just
25 compensation. They are seeking to disturb the status quo

1 before a trial on the merits. This is a mandatory
2 injunction. Because strict scrutiny is given to all the
3 elements, they've got to show them. The burden should be
4 placed on the proponents of the injunction.

5 THE COURT: Thank you. I believe no one's rising,
6 and so that concludes that matter.

7 The Court will treat the motion to strike as under
8 advisement.

9 I would ask whether or not, Ms. Bagnell, you have any
10 further evidence?

11 MS. BAGNELL: No, Your Honor.

12 THE COURT: And do the defendants?

13 MR. HOWELL: Yes, Your Honor. We'd like to call a
14 landowner and submit a landowner affidavit. I believe other
15 attorneys plan to do the same.

16 THE COURT: And you may do so.

17 (End of excerpt, testimony of Todd Goldman.

18 Proceedings followed but were not transcribed.)

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1 CERTIFICATE OF OFFICIAL REPORTER

2 I, Catherine Schutte-Stant, Federal Official Realtime
3 Court Reporter, in and for the United States District Court
4 for the Southern District of West Virginia, do hereby
5 certify that, pursuant to Section 753, Title 28, United
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7 of the stenographically reported proceedings held in the
8 above-entitled matter and that the transcript page format is
9 in conformance with the regulations of the Judicial
10 Conference of the United States.

11

12 s/Catherine Schutte-Stant, RDR, CRR

13

February 9, 2018

14

Catherine Schutte-Stant, RDR, CRR
15 Federal Official Court Reporter

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